



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC729]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows in Ketchikan, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization (IHA).

SUMMARY: NMFS received a request from the Alaska Department of Transportation and Public Facilities (ADOT) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to ferry berth improvements in Tongass Narrows in Ketchikan, Alaska. These activities consist of activities that are covered by the current authorization, but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.Fleming@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources (OPR), NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notifications of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not

intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a 1-time 1-year renewal IHA following notification to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notification is planned or (2) the activities as described in the **Description of the Specified Activities and Anticipated Impacts** section of the initial IHA issuance

notification would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notification of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notification by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals. Any comments received on the potential renewal, along with

relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notification. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notification of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On March, 5 2022, NMFS issued an IHA to ADOT to take marine mammals incidental to the construction and/or improvements to four ferry berths in Tongass Narrows in Ketchikan Alaska: Gravina Airport Ferry Layup Facility, the Gravina Freight Facility, the Revilla New Ferry Berth and Upland Improvements, and the New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements (87 FR 15387, March 18, 2022), effective from March, 5, 2022 through March 4, 2023. NMFs previously issued

two consecutive IHAs, one of which was renewed and the other reissued, prior to issuing the initial IHA (which includes some construction that was originally planned under the consecutive IHA's as well as some new/additional work) associated with this renewal request.

Following the issuance of the initial IHA, ADOT reported the presence of northern elephant seals (*Mirounga angustirostris*) in the area, which had not been anticipated. In June 2022, NMFS modified the March 2022 initial IHA by adding authorized take by Level B harassment of this species at ADOT's request.

In July 2022 ADOT also requested to install a subset of temporary piles via down-the-hole (DTH) methods rather than the previously assumed vibratory pile driving, in case the overburden onsite was not deep enough. In September 2022 NMFS determined that ADOT's requested modification did not alter the original scope of activity analyzed or the impact analysis in a manner that materially affected the basis for the original findings. NMFS additionally modified the IHA to require additional shutdown zones but determined that authorization of additional take was not required.

On January 5, 2023, NMFS received an application for the renewal of the initial IHA. Following NMFS' review of the application, the ACOE submitted a revised version on January 19, 2023 and again on January 25, 2023. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization (and subsequent modifications) discussed above but will not be completed prior to its expiration. As required, the applicant provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

ADOT is making improvements to existing ferry berths and constructing new ferry berths on Gravina Island and Revillagigedo (Revilla) Island in Tongass Narrows, near Ketchikan in southeast Alaska. These ferry facilities provide the only public access between the city of Ketchikan, AK on Revilla Island, and the Ketchikan International Airport on Gravina Island. In-water work associated with the Revilla New Ferry Berth and Upland Improvements, and Gravina Airport Ferry Layup Facility have been completed. Only partial in-water work has been completed at the Gravina Island Shuttle Ferry Berth/Related Terminal Improvements, and no in-water work has been completed towards the Freight Facility. The remaining marine construction associated with the activities is planned to occur over 30 non-consecutive days over 1 year beginning March 5, 2023. The project's planned activities that have the potential to take marine mammals, by Level A harassment and Level B harassment, include vibratory and impact pile driving, DTH operations for pile installation (rock socketing of piles and tension anchors to secure piles), and vibratory pile removal.

Under the initial IHA, Level B harassment is authorized for a small number of nine species of marine mammals (including northern elephant seal). Of those nine species, Level A harassment was authorized for five species Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*) and minke whale (*Balaenoptera acutorostrata*). Neither ADOT nor NMFS expects serious injury or mortality to result from this activity and, therefore, a renewal IHA is appropriate.

The following documents are referenced in this notification and include important supporting information:

- Initial 2022 final IHA (87 FR 15387, March 18, 2022);
- Initial 2022 proposed IHA (87 FR 5980, February 2, 2022); and
- Initial IHA application, Biological Opinion, References (available at

www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements-0).

Detailed Description of the Activity

A detailed description of the ferry berth construction and improvements for which take is proposed here may be found in the notifications of the proposed and final IHAs for the initial authorization. NMFS also incorporates the installation of 20 24-inch temporary piles via DTH methods (rather than vibratory pile driving) at the Freight and Layup Facility (via the September 2022 modification of the initial IHA) to that detailed description, increasing the overall DTH drilling duration by approximately 6 percent over the duration of the project, as compared with the analysis in the **Federal Register** notices for the initial IHA. The 20 temporary piles require relatively short durations of DTH drilling in comparison to the production piles included in the initial analysis, which are drilled much further into the bedrock.

While the in-water work associated with the Revilla New Ferry Berth and Gravina Airport Ferry Layup Facility have been completed, the Gravina Shuttle Island Ferry Berth and the Freight Facility have not. At the time of the renewal request no in-water work had been completed at the Freight Facility and a subset of in-water work had been completed at the Gravina Island Shuttle Ferry Berth:

- Installation and removal of twelve 20-inch temporary piles;
- Installation of 10 rock sockets; and
- Installation of 12 24-inch permanent piles.

In-water work that is planned for completion under this renewal IHA include remaining work at the Gravina Island Shuttle Ferry Berth:

- Installation of twenty-three 24-inch piles;
- Installation of twenty-eight tension anchors;
- Installation of 11 rock sockets and all pile driving activities for the Freight

Facility:

- Installation of six 20-inch steel piles;
- Installation of three 24-inch piles;
- Installation of four 30-inch steel piles;
- Installation and removal of twelve 24-inch temporary piles;
- Installation of 13 tension anchors;
- Installation of 5 rock sockets.

The location, timing (*e.g.* seasonality), and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notifications (as updated through incorporation of the request to install temporary piles via DTH, rather than vibratory driver).

The remaining marine construction associated with the activities is planned to occur over 30 non-consecutive days over one year beginning March 5, 2023. Though concurrent use of two hammers is unlikely/expected to rarely occur during the remaining work under the renewal, the possibility remains. The initial IHA accounted for concurrent use of any combination of hammers for half the anticipated number of days of construction. That assumption is carried over into this proposed renewal IHA. The proposed renewal would be effective for a period not exceeding one year from the date of expiration of the initial IHA (March 5, 2023).

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA (87 FR 5980, February 2, 2022), the final IHA (87 FR 15387, March 18, 2023) for the initial authorization. We supplement that description here with additional information for northern elephant seals.

Northern elephant seals breed and give birth in California and Baja California, primarily on offshore islands (Stewart *et al.*, 1994). Spatial segregation in foraging areas between males and females is evident from satellite tag data (Le Beouf *et al.*, 2000). Males migrate to the Gulf of Alaska and western Aleutian Islands along the continental shelf to feed on benthic prey, while females migrate to pelagic areas in the Gulf of Alaska and the central North Pacific to feed on pelagic prey (Le Beouf *et al.*, 2000). Elephant seals spend a majority of their time at sea (average of 74.7 days during post breeding migration and an average of 218.5 days during the postmolting migration; Robinson *et al.*, 2012). Although northern elephant seals are known to visit the Gulf of Alaska to feed on benthic prey, they rarely occur on the beaches of Alaska. However, there are recent reports of elephant seals occurring in and near the Tongass Narrows

NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA. This includes consideration of changes proposed in the Draft 2022 Marine Mammal Stock Assessment Report (SARs) (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>) published on January 24, 2023, which include a slightly reduced Alaska Resident killer whale population abundance estimate.

In addition, the draft 2022 SARs include proposed update to stock structures for humpback whale and harbor porpoise. For humpback whales, the new structure, if finalized, would modify the MMPA-designated stocks to align more closely with ESA-

designated distinct population segments (DPSs). Please refer to the draft 2022 Alaska and Pacific Ocean SARs for additional information.

NMFS OPR, Permits and Conservation Division has generally considered peer-reviewed data in draft SARs (relative to data provided in the most recent final SARs), when available, as the best available science, and has done so in this proposed renewal IHA for all species and stocks with the exception of the new proposal to revise certain stock structures. Given that the proposed changes to the stock structures involve the application of NMFS' Guidance for Assessing Marine Mammal Stocks and could be revised following consideration of public comments, it is more appropriate to conduct our analysis for this proposed renewal IHA based on the status quo stock structures identified in the most recent final SARs (2021, Muto *et al.*, 2022).

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the notices of the proposed IHA (87 FR 5980, February 2, 2022) and final IHA (87FR15387, March 18, 2023) for the initial authorization.

In the case of installing temporary piles via DTH drilling rather than vibratory drilling, the nature of the impacts are the same, but they required identification of larger Level A harassment zones and a larger Level B harassment zone than originally anticipated. For installation of these temporary piles using DTH drilling, given the estimated source level of 167 dB RMS, the Level B harassment zone would be 13,594 m for all hearing groups. Regarding Level A harassment, using an estimated source level of 159 dB SEL at 10m, a strike rate of 15 strikes per second, an estimated DTH drilling duration of 180 minutes per pile (maximum duration estimated by ADOT), two piles per day (maximum daily pile number estimated by ADOT), and a transmission loss coefficient of 15 m, the use of DTH drilling for these temporary piles is estimated to

produce the following hearing group-specific Level A harassment zones:

- Low-frequency cetaceans: 1,183 m;
- Mid-frequency cetaceans: 42 m;
- High-frequency cetaceans: 1,410 m;
- Phocid pinnipeds: 633 m; and
- Otariid pinnipeds: 46 m.

NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs (87 FR 5980, February 2, 2022; 87 FR 15387, March 18, 2022) for the initial authorization. The source levels and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Here, we provide additional discussion for northern elephant seal.

In consideration of the information provided by ADOT, described above in this section, NMFS expected that one elephant seal may have been taken by Level B harassment per week over the remainder of the effective period of the IHA (through March 4, 2023). At the time of analysis, 37 weeks remained in the effective period of the IHA, and NMFS authorized 37 takes of the California breeding stock of elephant seals.

Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA and subsequent authorization of take by Level B harassment of elephant seal. The take calculation method also remains the same, with the exception of fewer days of activity than what was described in the initial IHA. The

approximate total number of operational days for this Renewal IHA is 33 percent of what was analyzed in support of the initial IHA. As such, take for most stocks have been reduced to 33 percent of the take authorized through the initial IHA (including for elephant seal). In cases when such a change would bring authorized take levels below the estimated group size for a given species [described in Initial 2021 proposed IHA (87 FR 5980, February 2, 2022; the Initial 2022 final IHA (87 FR 15387, March 18, 2022)]; take has been increased to the estimated group size to retain some allowance in the event that this species should occur in the project area.

Table 1. Estimated Take Proposed for Authorization and Proportion of Population Potentially Affected.

Proposed Authorized Take					
Species	DPS/Stock	Level A Harassment	Level B Harassment	Total	Percent of Stock
Steller sea lion	Eastern U.S.	30	716	746	1.7
Harbor seal	Clarence Strait	38	335	373	1.3
Harbor porpoise	Southeast Alaska	5*	9	14	1.1
Dall's porpoise	Alaska	12*	68	80	0.6
Pacific white-sided dolphin	North Pacific	0	92*	92	3.4
Killer whale	Alaska Resident	0	24	24	1.0
	West Coast Transient				6.9
	Northern Resident				7.9
Humpback whale	Central North Pacific	0	75	75	0.7
Minke whale	Alaska	1*	2*	3	N/A
Northern Elephant Seal	California Breeding Stock	0	12	12	0.01

*Take for most stocks have been reduced to 33 percent of the take authorized through the initial IHA. In cases when such a change would bring authorized take levels below the estimated group size for a given species [described in Initial 2021 proposed IHA (87 FR 5980, February 2, 2022; the Initial 2022 final IHA (87 FR 15387, March 18, 2022)], take has been increased to the estimated group size to retain some allowance in the event that this species should occur in the project area.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the FR Notification

announcing the issuance of the initial IHA (87 FR 15387, March 18, 2022), and subsequent updates to shutdown zones for DTH installation of temporary piles, are included in Table 2 and Table 3.

The same measures are proposed for this renewal and are summarized here:

- ADOT must implement a minimum shutdown zone of 10 m radius around the pile/hole/vessel for use of in-water heavy machinery/vessel (*e.g.*, barge, dredge);
- ADOT must shut down if any marine mammals come within hearing group-specific shutdown zones (Table 2 and Table 3);
- ADOT must implement pile driving soft-starts whereby hammer energy is gradually ramped-up;
- ADOT must employ at least three PSOs to monitor the harassment zones;
- ADOT must submit a draft report detailing all monitoring within ninety calendar days of the completion of marine mammal monitoring or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first;
- ADOT must prepare and submit final report within thirty days following resolution of comments on the draft report from NMFS;
- ADOT must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- ADOT must report injured or dead marine mammals.

The discussion of the least practicable adverse impact included in those documents and the Notice of the proposed IHA (87 FR 5980, February 2, 2022) remains accurate.

Table 2. Tiered Shutdown Zones and Level B Harassment Zones, based on activity and duration for vibratory pile driving and removal, impact pile driving, and single-source DTH.

Activity	Pile size (m)	Minutes per Pile or	Minimum Shutdown Zone (m)							Level B Harassment Isopleth
			LF (humpback Whales)	LF (minke whales)	MF	HF	PW	OW	Elephant Seal <small>Dashes indicate</small>	

		Strikes per Pile							that shutdown zones have not been explicitly calculated. ADOT may implement a tiered approach to shutdown zones, depending on the daily duration of activities, following the method described in the Mitigation Measures section of the initial Final IHA Notice.			
Vibratory Installation	30	60 min	50	20						6,310		
	24	60 min		5,412								
	20	60 min										
Vibratory Removal	24	60 min										
DTH of Temporary Piles	24	180 min	1,200	1,200	50	1,450	650	50	650	13,594		
DTH of Rock Sockets	30	60 min	780	1,500	30	500	200	40	450	13,594		
		120 min	1,300		50			50	-			
		180 min	1,700		60			70	-			
		240 min	2,000		70			80	-			
		300 min	2,300		90			90	1,250			
		360 min	2,600		100			100	-			
		420 min	2,900						-			
		480 min	3,100						-			
		540 min	3,400						-			
		600 min	3,600		130			100	1,950			
	24	60 min	360	1,500	20	500	200	20	200			
		120 min	570		30			30	-			
		180 min	750		30			30	-			
		240 min	910		40			40	-			
		300 min	1,100		40			50	600			
		360 min	1,200		50			50	-			
		420 min	1,400		50			60	-			
		480 min	1,500		60			60	-			
		540 min	1,600		60			70	-			
		600 min	1,700		60			70	900			
DTH of Tension Anchor	8	120 min	90	90	20	100	50	20	600			
		240 min	130	130		160	70		900			
Impact Installation	30	50 strikes	100	100	20	120	60	20	60	2,154		
	24	50 strikes	60	60		70	30		30	1,000		
	20	50 strikes							30			

Table 3. Shutdown Zones, by Hearing Group for Simultaneous Use of Two DTH Hammers.

Activity Combination	Duration (minutes)	Level A Harassment Isopleth (m)					
		LF	MF	HF	PW	OW	Elephant Seal
8-in pile, 8-in pile	60	90	20	100	50	20	50
	120	130		160	70		70
	180	170		200	100		100
	240	210		250	110		150
8-in pile, 24-in pile	60	520	20	500	200	20	300
	120	820	30			40	450
	180	1,080	40			50	600
	240	1,300	50			60	700
8-in pile, 30-in pile	60	1,110	40			50	600
	120	1,770	70			70	950
	180	2,310	90			90	1,250
	240	2,800	100			110	1,500
24-in pile, 24-in pile	60	570	20			30	350
	120	910	32			40	500
	180	1,190	42			50	650
	240	1,440	60			60	800
24-in pile, 30-in	60	900	40			40	500
	120	1,430	60			60	800
	180	1,880	70			80	1,050
	240	2,270	90			90	1,250
30-in pile, 30-in pile	60	1,230	50			50	700
	120	1,950	70			80	1,050
	180	2,550	100			100	1,400
	240	3,090	110			120	1,650

Comments and Responses

As noted previously, NMFS published a notification of a proposed IHA (87 FR 5980, February 2, 2022) and solicited public comments on both our proposal to issue the initial IHA for ferry berth construction and improvement and on the potential for a renewal IHA, should certain requirements be met. No public comments were received.

Preliminary Determinations

The proposed renewal request consists of a subset of activities analyzed through the initial authorization and subsequent authorizations described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that ADOT's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance of all stocks). Although new abundance information became

available for Alaska Resident killer whale, none of this new information affects NMFS' determinations supporting issuance of the initial IHA. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA (as modified).

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) ADOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS OPR consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NMFS' Alaska Regional Office (AKRO).

The effects of the Federal action authorized through the initial IHA were adequately analyzed in NMFS ESA section 7(a)(2) Biological Opinion for Construction of the Tongass Narrows Project (Gravina Access), revised December 19, 2019. It

concluded that the take NMFS proposed to authorize through the initial IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat. Because this proposed renewal IHA would authorize a subset of activities already analyzed through the existing Biological Opinion, reinitiating consultation is not necessary.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to ADOT for conducting ferry berth construction and improvements in Tongass Narrows, Kethickan, AK, between March 5, 2023 and March 4, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notification. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: February 6, 2023.

Kimberly Damon-Randall,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2023-02808 Filed: 2/9/2023 8:45 am; Publication Date: 2/10/2023]